83-1630

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

MARY ANN SCHWEGMANN a/k/a
MARY ANN BLACKLEDGE,

Appellants,

vs.

John G. Schwegmann, Jr. et al.
~~SUPREME COURT OF THE STATE OF LOUISIANA~~,

Respondents

PETITION FOR WRIT OF CERTIORARI

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APPENDIX C

APPENDIX "C"

SUPREME COURT OF THE STATE OF LOUISIANA

NUMBER: 83 C 2500

MARY ANN BLACKLEDGE,
a/k/a MARY ANN SCHWEGMANN

PLAINTIFF-APPELLANT

VERSUS

JOHN G. SCHWEGMANN, JR., ET AL.

DEFENDANT-APPELLEE

PETITION FOR WRIT OF CERTIORARI AND REVIEW

SUPREME COURT OF LOUISIANA
FILED DEC. 9 1983

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SUPREME COURT OF THE

STATE OF LOUISIANA

NUMBER:

MARY ANN BLACKLEDGE,
a/k/a MARY ANN SCHWEGMANN

VERSUS

JOHN G. SCHWEGMANN, JR., ET AL

PETITION FOR WRIT OF CERTIORARI AND REVIEW

The petition of Mary Ann Blackledge, a/k/a Mary Ann Schwegmann was dismissed on a motion for summary judgment brought by the defendants, John G. Schwegmann, Jr., et al, in the 24th Judicial District Court in case number 231-175, Division "B", the Honorable Frank J. Zaccaria. The judgment signed on the 13th day of September, 1982 was appealed to the Fifth Circuit Court of Appeals and a judgment rendered by the Fifth Circuit on November 9, 1983 upholding the judgment of the

lower court. No motion for re-hearing was filed and plaintiff appeals to the Supreme Court for a writ of certiorari and review of the judgment.

JURISDICTION

This Honorable Court has jurisdiction over this matter pursuant to Article 5, Section of the Louisiana Constitution.

STATEMENT OF THE CASE

Both the lower court and the Fifth Circuit Court of Appeal addressed the issue of the contractual rights as between a concubine and a paramour.

The Court held that it is in the best interest of the State to continue to deny individuals who live together and who contract any remedy in Court. This case comes to the Louisiana Supreme Court whereby the oral contract as between Mary Ann Blackledge, a/k/a Mary

Ann Schwegmann and defendant is accepted as valid as are all other allegations in the pleadings. The Court then goes on to disallow the contract by classifying it as a universal contract (a partnership term which no longer exists in the present partnership law.)

Most importantly the Fifth Circuit Court of Appeals has upheld the "unlawfulness of a concubinage relationship" and has denied a concubine access to and legal remedys which would be available to other members of society. Had Mary Ann Blackledge, a/k/a/ Mary Ann Schwegmann contracted with John G. Schwegmann, Jr. and not ever had "sex" with him, she would have her day in Court under all legal theories that would give rise to causes of action as between the parties. Mary Ann Blackledge, a/k/a

Mary Ann Schwegmann is not attempting to raise her status to the of a legal wife. She and John G. Schwegmann, Jr. never believed they were married nor does she have any of the ancillary succession or alimony rights accorded to a legal wife.

The courts of Louisiana based on a case by case development of the law have determined that the moral fabric of society would be destroyed by recognizing that men and women live together without the benefit of marriage have, have children and structure their lives around that relationship as a primary relationship. Further, the courts by virture of the parties status refuse to recognize any legal contracts that the parties may have made as between themselves. The Courts also refuse to rectify a situation when one party is enriched and another

party is improvished.

Plaintiff's case was thrown out of Court because she and John G. Schwegmann, Jr. had a meritous relationship preventing the Court for ascertaining the merits of the case. Since there are no presumption nor rights created by the law, each case would stand on the facts of that case and the applicable law of the State.

Can the State under any conceivable moral justification refuse to give litigants a day in Court? Because of the economic development in the State, most of the business ventures and money matters were handled by the male paramour and therefore the male paramour was not economically punished in the same way as the concubine.

Plaintiff seeks that the Supreme Court

of the State of Louisiana review the law vis-a-vis a concubine and paramour and review the decision of the Fifth Circuit Court of Appeal.

The facts of the case are:

Plaintiff began working at the Schwegmann Stores and more particularly the Airline store in 1958 when she was 17 years old (Plaintiff's deposition Vol. I pp. 86). She later worked at other jobs in the stores (Plaintiff's deposition, Vol. 1, pp. 87). Plaintiff quit her job at the Schwegmann store when she began work at the Shell Oil Company in 1960, where she worked until 1965 (Plaintiff's deposition, Vol. I, pp. 88). Her job at Shell Oil Company was in the oil and gas department (Plaintiff's deposition, Vol. I pp. 163). Plaintiff would leave her job at Shell Oil Company

and meet John G. Schwegmann, Jr. after work at one of the Schwegmann stores, usually the Airline store. At that time she began evaluating the work done at the Schwegmann store for defendants and reviewed same with John G. Schwegmann, Jr. (Plaintiff's deposition, Vol I pp. 163-175). This continued for a period of approximately five years between 1960 and 1965.

Defendant, John G. Schwegmann, Jr., and Mary Ann Blackledge, a/k/a Mary Ann Schwegmann, had many businesses and business ventures which they were involved in over a twenty-one (21) year time period.

The parties contracted in May of 1966. They reaffirmed and modified their contract in July of 1966. The parties contracted to live together and to share

everything. From May and July of 1966 plaintiff upheld her part of the contract by living with defendant until he asked her to leave (Plaintiff's deposition, Vol. II pp. 211-220). During the time period she lived with John G. Schwegmann, Jr., she complied with the contract.

Plaintiff and defendant, John G. Schwegmann, Jr., developed a business of real estate development and speculation before they contracted. (Plaintiff's deposition, Vol. 1 pp. 164-184). That continued after their contract.

During the time period they were dating, she and John G. Schwegmann, Jr. always discussed real estate speculations. John G. Schwegmann, Jr. was an astute business man who was involved in many real estate acquisitions (see attachment to opposition to the motion for summary

judgment drawing accting sheets real estate taxes 1967 - 1978 Exhibit H).

Plaintiff stated that she was asked and did give advice to the defendant on real estate ventures before she and John G. Schwegmann, Jr. contracted in 1966 (Plaintiff's deposition, Vol. 1 pp. 164-195). After the contract between Mary Ann Blackledge, a/k/a/ Mary Ann Schwegmann, she was asked by defendant and gave advice on the real estate ventures between 1966 and 1978; some of those ventures were the Georgia/ Pacific and ancillary land in St. Charles Parish, Powers Drive, Tall Timbers, Crowder Road, and Bullard Road (Plaintiff's deposition, Vol. I pp. 164-180). Plaintiff, defendant, John G. Schwegmann, Jr., and his sister participated in a real estate venture involving 6.6 acres

of land where they bought and sold property for speculation (Plaintiff's deposition, Vol. 1 pp. 185). This transaction took several years to complete but was completed in 1978 and the money was distributed in 1978. John Charbonnet was the attorney who represented Mary Ann Blackledge, a/k/a Mary Ann Schwegmann, in this real estate transaction (Plaintiff's Deposition Vol. IV pp. 488 - 517) and received a fee for his representation. Mary Ann Blackledge, a/k/a Mary Ann Schwegmann, also asked John G. Schwegmann, Jr. to purchase property at the Roosevelt location (Plaintiff's Deposition Vol. I pp. 185).

Mary Ann Blackledge, a/k/a Mary Ann Schwegmann, contracted that she would live with John G. Schwegmann, Jr. and they would share everything. After 1966,

until the contract terminated, which would be at one of the parties death, (Vol. VII pp. 805).

John G. Schwegmann, Jr. agreed that at the moment she contracted, she would receive one-half of all of John G. Schwegmann, Jr.'s net assets.

John G. Schwegmann, Jr. and Mary Ann Blackledge, a/k/a Mary Ann Schwegmann agreed thereafter to share all other net assets accumulated during the time they lived together.

Plaintiff and defendant did not believe they were legally married nor did plaintiff and defendant ever go through a wedding ceremony (Plaintiff's deposition Vol. II pp. 255-261). Plaintiff and defendant, from time to time, held themselves out to be Mr. and Mrs. John G. Schwegmann, Jr., due to 3rd parties

assumptions, his political career and because of their affection for one another. (Plaintiff's deposition Vol. II pp. 252 - 262). Defendant told plaintiff that he was frightened of ever marrying again because he had driven his other wives crazy (Plaintiff's deposition Vol. II pp. 255). The parties lived in a common-law marriage.

Defendant did many things in compliance with the contract.

In 1977, Defendant stated that one-half of the sale of the St. Charles property was hers, and stated that all money derived from the anti-trust litigation, as regards the wholesale liquor business, commenced by Stone, Pigman, Walther, Wittman & Hutchinson would be used by them to travel and continue their real estate speculations and that one-half of

it belonged to her. It is unknown to plaintiff, what happened to all the money derived from the settlement of anti-trust suits and the St. Charles property.

In addition to the proceeds of the anti-trust suit, John G. Schwegman, Jr. agreed that after the sale of the property next to the Schwegmann store terminal that the proceeds would be placed in a Certificate of Deposit and used by both parties (Plaintiff's Deposition Vo. I pp. 181-183).

John G. Schwegmann, Jr. gave money to plaintiff before the contract in 1966 (Plaintiff's deposition Vol. I pp. 216). After the contract, Mary Ann Blackledge a/k/a Mary Ann Schwegmann received money on a month by month basis, ranging from $150.00 per month to $1000.00 per month (Exhibit H). She received two houses from John G. Schwegmann, Jr. during the

contract (Plaintiff's deposition Vol. IV pp. 447-453). Plaintiff also received gifts from John G. Schwegmann, Jr. from 1966 to 1978 (Plaintiff's deposition Vol. IV pp. 438-446).

John G. Schwegmann, Jr. bought Mary Ann Blackledge a/k/a Mary Ann Schwegmann a mercedes which is not in her possession (Plaintiff's deposition Vol III pp. 491 - 487). After he asked her to leave in 1978, he continued to pay her at least $500.00 per month and from June through October 1979 $1000.00 per month in recognition of the contract (Plaintiff's deposition Vol. III pp. 438-451 Exhibit H).

Mary Ann Blackledge, a/k/a Mary Ann Schwegmann did the following to comply with the contract:

Mary Ann Blackledge, a/k/a Mary Ann

Schwegmann advised John G. Schwegmann, Jr. and board members of the corporations companies regarding (1) salaries of employees; (2) policy decisions; (3) design, planning and building of the Schwegmann stores built after 1966; (4) the day to day operations of the stores. She spoke to the managers of the defendant stores and compared prices for the defendant stores (Plaintiff's deposition Vol. III, pp. 343-389), and wrote editorials contained within the advertisements run by the defendant stores on a weekly basis (Plaintiff's deposition Vol. IV pp. 539).

John G. Schwegmann, Jr. sold all of his interest in the Schwegmann stores property to John F. Schwegmann which was done to the detriment to plaintiff's equitable ownership rights.

Mary Ann Blackledge, a/k/a Mary Ann Schwegmann took care of all household tasks at the Green Acres Road house and at other places, depending on where the parties were at the time.

During the time Mary Ann Blackledge, a/k/a Mary Ann Schwegmann and John G. Schwegmann, Jr. lived together, she took care of his daughter, Margie Schwegmann, for 13 years (from 1966 to 1978) (Plaintiff's deposition Vol. II pp. 247) and later cared for defendant during a long protracted illness (1977-1978) from which he has never recovered (Court proceedings, Testimony of Doctors). Plaintiff contributed all of her money back into the joint effort between 1966 and 1978.

Mary Ann Blackledge, a/k/a Mary Ann Schwegmann gave advice on real estate

speculations and purchases and supported defendant's political career and other business interests which were ancillary to his primary business.

After defendant's (John G. Schwegmann's Jr.) stroke in 1977 which hampered the business endeavors of both parties. From the time of Mr. Schwegmann, Jr.'s 1st stroke until Mary Ann Blackledge, a/k/a Mary Ann Schwegmann left the Green Acres Rd. house, she took care of all of defendant's needs. The defendants, John F. Schwegmann, Margie Schwegmann and the entities comprising the Schwegmann stores, asked plaintiff to confine and dedicate all her activities to defendant, John G. Schwegmann, because of his health problems. Both parties limited their travel, their life styles, and their business interests after 1977 to accommodate defendant's physical limitations. All other

All other defendants had a fiduciary responsibility to plaintiff and to defendant to maintain plaintiff's contractual interest in the joint business accumulated by plaintiff and John G. Schwegmann, Jr..

Mary Ann Blackledge, a/k/a Mary Ann Schwegmann accepted these limitations on their business endeavors and continued to live with and care for him under the terms and conditions of her contract until 1978.

Defendant, John F. Schwegmann, personally acknowledged the oral contract between his father and plaintiff contracted in 1966 (Plaintiff's deposition No. IX pp. 1054-1060).

Defendants, the Schwegmann businesses, acknowledged the oral contract between John G. Schwegmann, Jr. and plaintiff

contracted in 1966 (Plaintiff's deposition Vol. IX pp. 1054-1060).

Defendant, John G. Schwegmann, Jr. accepted and was enriched by the work of the plaintiff and is indebted to her in an amount to be determined by the Court.

Defendant, John F. Schwegmann, accepted and was enriched by the work of the plaintiff and is indebted to her in an amount to be determined by the Court.

Defendant, Margie Schwegmann, accepted and was enriched by the contract of the plaintiff and is indebted to her in an amount to be determined by the Court.

Defendants, the Schwegmann businesses, accepted and were enriched by the contract of the plaintiff and are indebted to her in an amount to be determined by the Court.

All defendants had a fiduciary responsibility to plaintiff and defendant to protect their property during the time period that John G. Schwegmann, Jr. was ill and she was caring for him. Defendants also have a fiduciary responsibility to plaintiff after May of 1978 when she was asked to leave John G. Schwegmann, Jr..

All defendants are indebted to plaintiff as the only value of assets received by Mary Ann Blackledge a/k/a Mary Ann Schwegmann from the contract would be approximately $120,000, the value of the two houses, $40,000 received from the transfer of the 6.6 acreage. All monthly monies she received average $4,000 per year (see exhibit H) for 13 years totaling approximately $50,000, which plaintiff put back into the household which

benefited the joint venture (Plaintiff's deposition Vol. III pp. 439). Defendant John G. Schwegmann, Jr. had assets in excess of 60 million dollars in 1979. During the time period the parties lived together he accumulated at least 40 million dollars. This accounts for his wealth before 1966 and accumulation of assets after 1966.

Plaintiff complied with the contract and was in compliance with the contract and seeks payment.

John G. Schwegmann, Jr. has breached the contract.

Margie Schwegmann has breached the contract.

John F. Schwegmann has breached the contract.

The defendant corporations/companies have breached the contract.

ISSUES

This matter came into the Fifth Circuit Court of Appeals on a motion of appellant. Appellant's causes of action have been dismissed as a matter of law, of the facts as they appear in the plaintiff's pleadings, depositions and ancillary exhibits are true.

In order to dismiss claims on a Motion for Summary Judgment, there can be no issues of fact, and as a matter of law, there are no causes of action. In this case Judge Zaccaria classified the oral contract as a universal partnership, and that since the partnerhip was not in writing, it would be invalid; and even if the contract were valid, it could not be upheld because it was derived from a meritorious relationship.

The order dismissed plaintiff's claim

or recovery based on an implied contract because the Court did not recognize any property rights between a concubine and paramour and the unmarried cohabitation would not give rise to property rights of the individuals.

The Judge further refused to allow Plaintiff's claim for recovery under the theory of quantum merit for domestic services because the underlying agreement was illegal because it derived from the illicit sex.

The Court rules this was no constructive trust because there was no fiduciary relationship between the plaintiff and any defendant.

The ancillary causes of action of declaratory relief and simulation are corollary to the oral and implied contracts and were dismissed because the

Court did not find that there was any form of contract.

Plaintiff uses the term common-law marriage which corresponds to the terminology used by the Louisiana Supreme Court in Henderson v. Travelers Insurance Co., 354 So. 2d 1031 (S. Ct. 1978) and Jackson v. Continental Gas Co., 412 So. 2d 1364 (S. Ct. 1982) when framing the issues before the Court. Writer acknowledges the repugnant nature of common-law terminology to the civil law.

ISSUE I. Should the oral contract be classified solely as a partnership?

ISSUE II. Should the plaintiff's common-law marriage defeat the oral contract?

ISSUE III. If a partner ship is a correct classification of the parties' agreement, doesn't the partnership law

passed in 1980 apply, thereby eliminating the application of past partnership law to the present case making a universal partnership null and void?

ISSUE IV. If the present partnership law applied, would the parties have a valid partnership?

ISSUE V. Could the oral contract encompass more than one partnership agreement?

ISSUE VI. Can the partnership or partnerships be valid if the partners are also in a common-law marriage?

ISSUE VII. Does Louisiana law recognize a constructive trust when there exists a fiduciary relationship? Is there a fiduciary responsibility between all defendants and plaintiff?

ISSUE VIII. Is the Court incorrect in stating as a matter of law that a common

law marriage does not give rise to property rights and that concubines and paramours have no rights to each other's property?

ISSUE IX. Can an individual who is impoverished and who by her actions has enriched other persons or entities be denied recovery from the enriched persons or entities because she lived in a common-law marriage?

ISSUE X. Can an individual who is impoverished and who by her actions has enriched the party she lived with be denied recovery from the enriched party because they lived in a common-law marriage?

ISSUE XI. Does Louisiana Civil Code Article 1481 violate the United States Constitution and the Louisiana State Constitution?

ISSUE XIII. Can individual be denied recovery after entering in a contract because they are in a common-law marriage as between themselves and third parties who benefited from the contract?

ISSUE XIV. Didn't all other defendants acknowledge the oral and implied contract and aren't they indebted to plaintiff based on the contract?

ISSUE XV. What monetary amount is plaintiff entitled to as a result of her oral contract and implied contract?

ISSUE XVI. What monetary amount is plaintiff entitled to as a result of her impoverishment and the enrichment of defendants?

ISSUE XVII. The Court should have considered the recusal of all of defendants' attorneys despite the absence of one attorney of record for defendant

and considered the tainting issue at the time of the hearing.

ISSUE XVIII. Should the settlement have been inforced?

ISSUE XIX. All of the above issues involve issues of fact demanding that of the all matters be remanded to trial court for adjudication.

ISSUE XX. In considering the Court's Judgment, the Court has burdened the plaintiff with proving in any future hearing that any recovery in quantum meruit would have to be independent from the relationship of concubinage, and plaintiff seeks that the Court of Appeals overturn this protion of the Judgment as being judicially too narrow.

ASSIGNMENT OF ERROR ON ISSUE II, ISSUE III, ISSUE VI, ISSUE VIII, ISSUE IX AND ISSUE XII

ARGUMENT ON ASSIGNMENT OF ERROR ON ISSUE II, ISSUE III, ISSUE VI, ISSUE VIII, ISSUE IX AND ISSUE XII

Marriage is the legal union of a man and woman. Historically, marriage was a moral issue which was incorporated in many religions. After the development of sophisticated governments, religion became a civil matter.

Although the Roman citizenry encompassed many religions which required marriage, a marriage was viewed as a civil matter which allowed the Roman governments to define the rights and status of citizens of the Roman Empire and their property. The Romans permitted a civil ceremony, and they allowed marriage by mere consenting words conducted in the present tense and marriage by agreement which was an agreement to

marry in the future following [sic] by carnal knowledge. Their form of marriage, derived from the Latins, existed until the 16th Century in both French and English law.[2] With the advent of Christianity, the Church's position on marriage, which at first was only a moral reformation on an individual's private life, became a true power with rights of legislation and of jurisdiction. The Church gained power within European governments which dictated the conditions and rules under which church members would marry without any concern for any necessity of civil formalities.

Marriage was more than a romantic notion to satisfy the parties' emotional needs and development. It was a legal structure endorsed by the Church and State to preserve order and stability according to religious tenets.

In the 15th and 16th Centuries, there existed in Europe a great struggle between the Roman Catholic Church and the royalty. Royalty slowly recovered its jurisdiction over the prerequisites of marriage and there became an absolute division between the law of the State and Canon law. French and English law regarding marriage was a fusion of religious requirements and civil requirements. Marriage was also used to enforce the social structure and maintain order of each government. The legal order defined the roles of individual members and the property of those individuals in relationship to the government.

English and French law in the 1600's and 1700'a still reflected the impact of the feudal system which had dominated European society for hundreds of years and which forfeited and protected the

inheritance rights of individuals.

Although fealty to a king or state was recognized, individual wealth and power was a measure of one's land ownership and control thereof and laws were implemented and preserved in order to allow an orderly transition of land and estates from father to son. At a man's death, property was inherited by his legitimate heirs. A legitimate heir included a wife and children or any collateral legitimate relative within the family.

Frenchman and Englishmen of the 1600's and 1700's, notwithstanding the preservation of society as men before them and after them, did not always limit their sexual curiosity and encounters to their wives. From time to time, despite their religious beliefs and their commitments to civil order,

they did not always continue to live with their wives or would not marry and would live with women who were not their wives, this resulted in the free union of two people and the ensuing birth of children. This is not to suggest that only Frenchmen and Englishment participated in this type of lusty behavior. These unions resulted in the birth of children out of wedlock or illegitimate children. The status of the parties who lived together out of wedlock was derived from Roman Law. Concubinage is a term that is derived from the Latin word concubinatus, meaning an informal, unsanctioned or natural marriage as distinguished from a civil marriage.[3] A concubine is one who cohabits with a man to whom she is not married or a sort of inferior wife [among Romans] upon whom the husband did not confer his rank or

quality and a concubine is a term which refers only to a women [sic].[4] Concubinage was recognized and practiced by both married and single Roman men.[6] This institution was condemned as immoral by the Christian Church and in 1563 any individual who continued to live together without marriage was excommunicated.[7] However, concubinage as a legally sanctioned institution continued to exist.

As the Europeans began to explore the new world. [sic] They brought their legal traditions regarding property. Marriage was encouraged. Marriage was many times physically impossible to consumate and did not always meet the needs of the new society. To accommodate both tradition and need both the French and Spanish allowed, a marriage by agreement, derived from Roman law, allowing the

parties to sign a document before a notary agreeing to take each other as husband and wife. The parties later solemized the marriage as promised.

Marriage by agreement persisted for a long time in the territory of Louisiana out of necessity and allowed some descretion [sic] as among parties who have lived together for long periods without formalizing their marriage. Sometimes the distinction between concubinage and marriage was merely timing.

When Louisiana was a territory, there was only the will of the individuals to implement any rule regarding marriage. As the territory succumbed to civilization, individuals loosely abided by the laws of the French or Spanish. There was both religious law and civil law. Religious laws affected one's morality and future consequences; other laws

affected one's status within the government. Just as the settlers brought their religion, wives and children, they also brought or created their own concubines and illegitimate children.

Concubinage was accepted in the territory of Louisiana and was less defined in practice than later when the territory became a state. The State of Louisiana, as an entity, enacted specific civil requirements to define marriage in order to assert the State's controlover marriage, creating uniformity and eliminating confusion which had arisen in the State due to tradition.

In Johnson v. Johnson, 117 La. 967, the State of Louisiana eliminated all marriage by agreement. The Court ruled that the only legal marriages in the State of Louisiana were ones which complied with state law. All marriages

not complying with the law were null and void. Johnson, supra, has not been changed and no marriage by agreement, procuration or representation is presently allowed under Louisiana law.

The exception to the general rule is a putative marriage as outlined in Louisiana Civil Code Articles 117 and 118 which states that parties must act in good faith, both believe that they are married and have participated in a ceremony. Succession of Marionni, 164 So. 797 (S. Ct. 1935) expanded the interpretation of the law to define good faith to exclude an actual ceremony if one or both parties have a reasonable belief that they were honestly married. They will be allowed to receive the benefits extended to individuals in a putative marriage. Good faith is always presumed.

The distincitions that the Court made in deciding which case would fall under the umbrella of a putative marriage and those which would be classified as common-law marriage are slim, thereby denying recovery to the woman and her heirs. Early cases bear distinct racial and cultural overtones. Succession of Dotson, 11 So.2d 448 (S.Ct. 1941); Sesostris Youchican v. Texas & Pacific Railroad, 86 So. 551.

The Court should take judicial notice of the status of women and other minority groups[5] in the State of Louisiana in the early 1800's when the body of family law was enacted. The law discriminated against all women, both married and single, and against blacks and Indians. The Court cannot consider the issues in this case without acknowledging the historical perspective found

within family law and the development of that law to reflect the changes in society from 1800 to 1983.

In the 1800's blacks were still slaves. Slaves could marry only with the consent of their owners. According to the Black Code in the State of Louisiana enacted by the territorial legislature, "Louisiana Code Noir" provided rules for owners and slaves. After the Civil War in 1865, slaves who were at that time cohabitating could execute an authentic act declaring that they were married and indicating when they married, and how many children were born of the marriage, with the names and dates of births of their children.[5]

One wonders how prior slaves who could not read would find cut about the law, assuming that they could afford to pay the notarial fee associated with such

a declaration. It is easy to speculate that very few slaves were able to avail themselves of this means to ratify their "common-law marriage" and remained in a status of concubinage. Common-law marriage is a popular term used to refer to a man and woman who live together without the benefit of marriage and who hold themselves out to be man and wife.[6]

This attempt to solve the problem of marriage among blacks was totally inappropriate considering the problem of literacy and the level of legal sophistication of former slaves.

Louisiana family law throughout the 1800's and 1900's has plagued this culture. The common-law marriage was not recognized in this state and all such unions were classified as concubinage.

Common-law marriage has not been accepted in Louisiana. Blasine v. Succession of Blasine, 30 La. Ann. 1388; Succession of Saines, 145 So. 270.

No legal benefits flowed to the children of these unions and to the individual concubines and paramours. No alimony or child support could be awarded and illegitimate children acquired none or less property rights than their legitimate counterparts. Concubines received no benefits of their unions. This, of course, brings us to another form of discrimination. Legally married women were treated unequally in the law and the community property laws of the State a tremendous disability on them.[7] The new community property laws did not go into effect until 1980. Concubines were given no rights under the law, although their

counterpart did not suffer in the same fashion.

The laws of the State continued to reflect up into the 1970's unequal treatment of women, blacks and Indians as indicated by the following laws:

The marriage of white persons with persons of color was forbidden (Louisiana Civil Code Article 94), and the marriage of Indians and persons of color was forbidden (La. R.S. 9:201); both laws were repealed in 1971. A divorced party could not marry the adulterer of his or her accomplice (Louisiana Civil Code Article 161, repealed in 1971). A widow could not marry for ten months after the dissolution of her marriage (Louisiana Civil Code Article 137, repealed 1970). The head and master law dictating that the man controlled the community and the woman's separate property and all other

ancillary matters (Louisiana Civil Code Articles 2325 - 2437 repealed 1980).

One of the most subtle types of discrimination exists in the guise of concubinage. It discriminates against black heritage, culture and, more particularly, against women. A woman is always a concubine and a male is a paramour. A concubine lives with a paramour and they are not married. The only references in Louisiana law to a concubine is the succession section of the Louisiana Civil Code in Article 1481. This article prohibits concubines from inheriting more than 1/10th of her paramour's (the male counterpart to a concubine) estate. There is a prohibition of a donation of immovables either inter vivos or mortis causa.

Ancillary articles to Louisiana Civil Code Article 1481 are Louisiana Civil Code

Articles 1483, 1484, 1485, 1486, 1487, 1488, 1491, 1496, and 1502. The codial articles on illegitimates go hand and hand with the state of concubinage. It's interesting that Louisiana Civil Code Article 1481 comes directly below a code article that defines the ability of a married woman to make donations.

Louisiana Civil Code Article 1481 is a gender based article as there is no counterpart to it prohibiting the inheritance of an immovable by a paramour or a prohibition as to his inheritance of more tha 1/10th of the concubine's estate and is violative of both the United States Constitution and the Louisiana Constitution.

The Court did not make any rulings on any constitutional issues raised in the original pleading and therefore plaintiff's argument may be premature.

Louisiana Civil Code Article 1481 is unconstitutional as it does not treat males and females equally. In addition to violating Article I, Section 3, it also violates the following parts of the Louisiana Constitution, Article 1, Sections 2, 3, and 4, and Louisiana Civil Code Article 1481, as well as the United States Constitution Article 14, Section 1.

Other than C.C. Art. 1481, there were two laws enacted in 1960 and 1975, repealed stating that common-law marriage was illegal. In fact, there were two laws which were passed reflecting society's state of mind, which stated that common-law marriage either written or oral, entered into between a man and woman together to become husband and wife without a ceremonial marriage, was a criminal offense. Its co-respondent law

was that it was illegal for a woman to have more than one illegitimate child (La.R.S. 14:79.2). Both laws were criminal offenses requiring a fine and imprisonment for at least one year. Robert Pascal, in an effort to recoup some measure of dignity for Rep. Tiche, Fields and Lehman, the authors of these bills interpreted La.R.S. 14:79.1 to mean that couples who are living in concubinage were excluded from the law and only those people who agree to cohabit and to be husband and wife without marriage could be prosecuted, obvicusly a "very fine" distinction. La.R.S. 14:79.2 was interpreted to mean that a woman could not be prosecuted unless she had more than one illegitimate child at one time. Both laws appear to be laws which created part of a series of Jim Crow laws. There is no evidence that anyone

was ever prosecuted or convicted under either statute.

The only other statue [sic] defining concubinage was passed in 1982 and states that a woman cannot receive alimony if she's living in "open concubinage."

The public policy arguments in the concubinage cases also violate the above articles of the Louisiana and United States Constitutions. The lower courts did not make a ruling on the constitutional issues and plaintiff may be premature in making this argument in this brief, but intends to preserve her constitutional argument in connection with the law of concubinage which developed via case law over the past 180 years.

Concubinage was widely accepted in the State of Louisiana and was sometimes

barely distinguishable from a marriage by agreement and a putative marriage. As society changed, the public policy arguments and disabilities against concubines became more distinguished. The only difference between a putative spouse and a concubine is good faith. Purvis v. Purvis, 162 So.2d 239 (2nd Cir. 1935).

Concubinage does not fall into the same category as prostitution as it has never been defined as indiscriminate sexual intercourse with males for compensation (La.R.S. 14:82). A mistress or courtesan is one whom a man sees primarily for sexual pleasure (Purvis v. Purvis, supra. "A mistress or courtesan is distinguished from a concubine. A concubine is one who performs the duties and assumes the responsibilities of a wife without the title and from a legal marriage." Purvis

v. Purvis, supra. A concubine is disguished from a putative wife in that the concubine knows she is not legally married nor does she believe that she is legally married. Gauff, et al. v. Johnson, et al, 109 So. 782; Succession of Johraus, 38 So. 417 (1905).

Since Louisiana Civil Code Article 1481 is the only article dealing specifically with concubines, the law developed from case law and from the application of public policy arguments and equity arguments (Louisiana Civil Code Article 21).

In the case law, public policy arguments state that concubinage is illegal and illicit. This put into motion public policy arguments that have never been challenged or examined in later cases.

It is important to track down the

Courts origin of the words such as illegal and illicit as used in case law. Before 1975 there was only one statutory reference to a concubine, Louisiana Civil Code Article 1481. There is no statute classifying concubinage or a concubine as being illicit or immoral. Although Louisiana Civil Code Article 27 does refer to illegitimate children who were born of an "illicit union".

Illegal implies that there is a violation of enacted law. For the court to use the word illegal, it implies that there is a Louisiana law which says that concubinage is illegal. There are no statutes that define concubinage as illegal and illicit. The terms are derived solely from the public policy arguments used consistently over a 180 year period and in the case law until Henderson v. Travelers Insurance Company,

354 So.2d 1031 (S.Ct. 1978).

Inherent in the concept of concubinage is that the concubine and her paramour have "illicit sex". One has to assume from case law that does not encompass any kinky sexual trends, but merely refers to any sex outside of marriage. Other terms used in cases are illicit connection (Lagarde v. Duhon, 98 So. 744 (S.Ct. 1924); illegal cohabitation (Guerin v. Bonaventure, 212 So.2d 459 (1st Cir. 1968); illicit relationship (Foshee v. Simkin, 174 So.2d 915 (1st Cir. 1965)).

Because individuals have "illicit, illegal sex", they are treated differently than two other individuals similarly situated. The case never refers to any specific statute or Louisiana Code Article in defining why sex in this situation is illicit or

illegal. In the early 1800's legal disabilities are justified in concubinage because "their condition" did not maintain good morals, or preserve the structure of society (Cole v. Lucas, 2 La. Ann. 946). The same rationale can be seen when examining the law regarding illegitimates. Disabilities are based on the unequal treatment of the concubine based on the above rationale has persisted from 1800 for a period of 183 years. Since that time there has been a phenomenal change in society's attitude toward sex, marriage, illegitimates, birth control, religion, status of minority groups, women's rights, and the economy as regards women. Can the State of Louisiana continue to maintain that individuals and, more particularly, a woman who lives in a status of concubinage or common-law be punished in

order to maintain good morals and do the disabilities actually "preserve" the best interest of society? Do the putative laws of the state which have been in effect since the early 1800's actually discourage the birth of illegitimate children and have they discouraged illicit unions?

Does the case law discriminate against individuals because of race? Cases before the turn of the century and especially between 1800 and 1865, displayed a very protective attitute toward concubines which reflected the acceptance of concubinage.

The cases before the 1900's carved out the following tests in deciding whether the concubines could recovery [sic] any property:

(1) Was the relationship one of concubinage?

(2) What was the motive and extent of the relationship?

(3) Can the two be separated?

(4) Consideration of the contributions of each individual of capital, labor, industry, economy vis-a-vis the cohabitation.

(5) Does the illicit, illegal union taint all parts of the endeavors of the parties?

(6) Equity?

Concubines in the 1800's actually won. Applying the above test one of the early cases ruled for the concubine. A couple had a business relationship and ran a boarding house. She did the work, using her furniture. He managed their business and took the profits allowing her usage of some of the money. There was no mention of a universal partership. The Court ruled in her favor on (1)

equitable principles; (2) her contribution of labor, industry and capital; (3) and the purpose of their coming together. The Court ruled that the motive was not for the purpose of concubinage. Contributions of labor, industry and capital were the important considerations. Viens v. Breckle, 8 Mart. (O.S. 11) (1820). The Court blamed the paramour for his contribution to the concubine's situation.

The relationship was characterized as concubinage, but the consideration of capital, labor, industry, economy and equity was more important than any of the other tests. The illicit sex did not taint the recovery and was considered to be separable from other issues before the Court.

Elise Delamour met Augusti V. Roger in Paris where they lived together.

Additionally, Elise gave money to Augusti and they established a business. That business continued for a long time period. All property accumulated in New Orleans was from profits of their joint business, a business of hairdressing and keepers of a perfume store. This case involved the division of all property acquired by the parties during their business and personal relationship and the Court granted Elise Delamour one-half of all property acquired during their relationship including the immovable property.

The Court reaffirmed the lower Court's award to the concubine, reasoning that Elise Delamour was entitled to one-half of the property under the legal theory of equitable ownership and stated that no principle of law or morality requires us to reverse the judgment of the district

court. The Court refused to recognize defendant's arguments that there was a universal partnership and stated that "no principle of law or morality requires us to reverse the judgment of the distric court". Delamour v. Roger, 7 La. Ann. 152 (NO 1852). The Court, although acknowledging that there was a [sic] "immoral connection", considered the equities in an objective evaluation, isolating the public policy argument.

In Delamour, supra, the Court created what we now call a constructive trust and recognized the fiduciary relationship of Mr. Roger. Mr. Roger had title and control of their joint property for some time and the property was in his name. The decision had all of the elements of a constructive trust. It also recognized a defacto community between the parties, quantum meruit quasi-

contract and and [sic] implied agreement. The Court relied very heavily on equitable principles.

The Court rejected the classification of the relationship as one of a universal partnership. The "equitable ownership" theory is a viable legal theory applied to the division of property between the concubine and the paramour.

In Malady v. Caldwell, 25 La. Ann. 448 (1873), the Courts applied the same equitable ownership theory which encompassed a fiduciary responsibility between the parties and created a defacto community also recognizing an implied contract and quantum meruit principles. This case involved an unusual set of circumstances. Mr. Malady abandoned his wife, and decided to broaden his horizons by moving to New Orleans. He apparently charmed a young

woman, Miss Caldwell, who began living with him. He was, of course, much older and may have been enamoured with her estate. Although not large, it was at least an estate. They ran a rooming house and Miss Caldwell took care of that endeavor; Mr. Malady, of course, managed the money. Property was acquired in the name of Miss Caldwell. However, the abandoned wife who was destitute found her way to New Orleans only to find her husband living in a common-law marriage. She sued Mr. Malady who had nothing, so her ingenious lawyer sued Miss Caldwell. The Court interceded to resolve the issue between the menage. The Court gave one-half of all of the property in Miss Caldwell's name to Mrs. Malady. The Court looked behind the title to examine the source of the funds which were used to purchase the property as in Viens

v. Breckle, 8 Mart. (O.S. 11) (1820). The Court gave Mr. Malady a windfall since, using the same equitable principles, he could obtain one-half of his wife's property and one-half of his concubine's property.

Other cases before the 1900's were: Ditch v. Wilkinson, 10 La. 201 (1836); Succession of Pereiulhet, 26 La. ANn. [sic] 87 (1889). [sic] All these cases the concubine or her heirs sought recovery for work provided as per the parties' express and implied agreements. In Ditch, supra, the concubine was barred from recovering any money based on their agreement as it was classified as a suit for wages and barred by a one-year prescriptive period. In Succession of Pereiulhet, supra, a woman received recovery for the fulfillment of her to take care of the man she lived with and the

Court indicated there was no proof of concubinage. Succession of Morvant, supra, the concubine had procedural problems and her recovery was limited to Louisiana Civil Code Article 1481. In Llula, supra, the heirs were also barred from recovery and the Court stated public policy arguments to bar recovery because concubinage is a source of dissolutiveness and evil and of course that applied to the offspring of concubines. The disabilities on both the concubine and the illegitimate is a direct attempt by the legislature to discourage concubinage (Succession of Llula, supra; Dupre v. Caruthers, 6 Ann. 156 (1851)).

Various cases before 1900 refused any recovery to the concubine due to Louisiana Civil Code Article 1481 (Siimpson [sic] v. Norman, 51 La. Ann.

[sic] 1355 (1899); Succession of Pereiul-het, supra; Succession of Beard, 14 La. Ann. 121; Lazanne v. Jacques, 15 La. 559 (1860)).

By the turn of the century there were two lines of cases - those recognizing elements of constructive trust, equitable ownership, quasi-contract/quantum meruit, de facto community and a great emphasis on equity and those cases barring recovery based on Louisiana Civil Code Article 1481 and public policy arguments.

The Victorian Age is upon society and ladies are covering piano legs for fear that their appearance is obscene. Sex is rigid and not even an object for discussion. Public policy arguments after 1900 and in future cases become more moralistic and more punitive. The Courts are still referring to concubinage as a common-law marriage.

In Simpson v. Norman, supra, the Supreme Court overturned the lower Court's decision. The lower Court held for the concubine and stated that concubinage was incidental to the contract; therefore, a concubine was not barred from recovery. The lower Court stated that if the contract is agreed upon before the concubinage, then the illicit connection would not bar recovery. The Supreme Court cited Louisiana Civil Article 1481 (1468) and reversed the lower Court barring recovery and limited any donation to 1/10th of a paramour's estate and a prohibition of the donation of an immovable. In addressing the contract issue, the Supreme Court stated that a contract between a concubine and paramour cannot be recognized if it derived from an "illicit relationship". The "illegal

union" requires punitive treatment. The Court in citing Louisiana Civil Code Article 1892 which states that a contract must have a lawful purpose and if it is contrary to good morals or public order, it can have no effect and it is void.

In Simpson, supra, the Court cites cases that are considered contrary to good morals or public order. Fox v. City of New Orleans, 12 La. Ann. 154 (1857), which violated a specific city ordinance regarding bids of work. In Fireman's Charitable Assoc. v. George H. Berghaus, George had a fire in his building but before the firemen could come and put the fire out, they made him sign a contract agreement to pay more money, although they were paid by the municipality to protect the citizens. Stupidly, the firemen proceeded to sue George to enforce the contract. George won and the contract

was void. The Court stated that their behavior was improper and no citizen should have to pay twice to receive fire services.

Mr. Glover and Mr. Taylor were running for public office and they contracted whereby each candidate would receive one-half of the net profits of the office for the term. The contract was found void and Mr. Glover, the loser, was unable to collect on the contract as it was against public policy (Glover v. J. H. M. Taylor, 38 La. Ann. 634 (1886)).

Mr. Davis was a "gambling man" who made a bet on the Clay/Polk presidential race and placed the bet with Mr. Holbrook as a third party. A controversy arose over the validity of the returns in Plaquemines Parish. The Court would not enforce the contract as it was

against public policy (Davis v. Holbrook, 1 La. Ann. 174 (1846)).

In comparing concubinage with the four cited cases, the Court again refers to the illegal, illicit nature of the relationship, and in dicta continues the public policy prohibition against common-law marriage. Three of the cited cases involved government officials and their conduct toward the public. Only the case on gambling involved a personal moral issue. The legislature later enacted legislation making gambling illegal (La.R.S. 1450). The legislature never enacted a comparative article on concubinage.

The Courts went to great lengths to maintain the disabilities against concubines but, as always, the Court continued to be swayed by equity. One of the most remarkable cases, as far as

contrary legal argument is LaGarde v. Duhon, 98 So. 744 (1923). Mrs. LaGarde asked for a recognition of one-half of the property of Mr. Dabon [sic]. They lived together from 1893 to 1919. Mrs. LaGarde rendered domestic services and stated that the contract was made before the cohabitation. Afterwards she put $100 of her own money toward the purchase of his house and all her wages had gone back into the joint effort. The Court reasoned that if there was a univeral partnership, it should be in writing, and therefore there was no valid partnership. All claims for services were dismissed because the concubinage was interwoven with the claim for wages. The Court then stated she can recover for monies advanced [sic] the deceased to discharge the mortgage on his home and the wages

which she turned over to him for partnership purposes which allowed recovery on an [sic] quantum meruit theory.

Like the early cases, later cases looked behind the title to examine the source of funds.

A new group of cases restricted recovery to concubines by narrowing the test so that if the parties reside in a state of concubinage or it is a common-law marriage, an illicit, illegal relationship taints financial dealings either personal or business. The prior tests of industry, economy, capital, and labor as between the parties, the intent and motive; or the equities, are overshadowed by the illicit relationship. The illicit sex in a common-law marriage taints and affects the body of the claims so fatally as to make remedy impossible. Sparrow v. Sparrow, 93 So.

2d 232 (S. Ct. 1951); Chambers v. Crawford, 150 So.2d 61 (2nd App. 1963); Guerin v. Bonaventure, 212 So.2d 459, 463 (1st Cir. 1960); Foshee v. Simkin, 174 So.2d 915 (1st Cir. 1965). The endeavors of the parties continued to be classified as a universal partnership (Godlin v. Deggs, 23 So.2d 704 (4th Cir. 1945); Chambers, supra; Foshee, supra; and Guerin, supra; Keller, supra.

No matter whether recovery was sought because of a commercial venture or for domestic services rendered over a long period of time, recovery was denied to the concubine or her heirs if the source of funds which were applied to the joint effort was obtained during the concubinage. Godlin v. Deggs, 23 So.2d 704 (4th Cir. 1945); Chambers, supra; Foshee, supra; and Guerin, supra; Keller, supra.

The State in providing for workmen's

compensation did not mention illegitimate children or concubines. The Louisiana Courts extended the State's workmen's compensation statute to include illegitimate children, but did not include coverage to concubines. Moore v. Capital Glass & Supply Co., et al, [sic] 25 So.2d 249 (1st Cir. 1946); Patin v. T. L. James & Co., Inc. 39 So.2d 177 (1st Cir. 1949), 42 So. 2d 304 (1st Cir. 1949); Jenkins v. Pemberton, 87 So.2d 775 (2nd Cir. 1956); Humphreys, et al. v. Marquette Casualty Co., et al, 103 So.2d 895 (S.Ct. 1958).

The Court in dicta stated that La.R.S. 23:1232 is social legislation and its extension to include illegitimate children, for coverage is sound as children are innocent victims, although no workmen's compensation should extend to concubines as they voluntarily entered

into a relationship not countered by the law of the State. Moore v. Capital Glass & Supply Co., et al, supra; Patin v. T. L. James & Co., Inc., supra; Jenkins v. Pemberton, supra; Humphreys, et al. v. Marquette Casualty Co., et al, supra.

The Workmen's Compensation Law does [sic] was extended to include coverage of a concubine or common-law wife. In a landmark decision, the Supreme Court ruled that a dependent concubine can recover workmen's compensation benefits (Henderson v. Travelers Insurance Co., 354 So.2d 1031 (S.Ct. 1978)).

The Supreme Court in its decision traces the history of workmen's compensation law in relationship to a concubine. Henderson involves a couple who lived together for eleven years.

The Court refers to her as a dependent concubine and uses the term "common-law wife". There were no other members of decedent's legitimate family. The Court described the relationship as a loving stable relationship, and the law is settled that dependent members of a decedent's family household are entitled to recovery under La.R.S. 23:1231, 1232(8), 1253. A broad interpretation of the statutes have been adopted to effectuate the social economic purpose of the statute which is "to provide compensation for dependents deprived of support through work-caused death of the decedent". (Caddo Contracting Co. v. Johnson, 64 So.2d 177 (1953); Patin v. T. L. James & Co., supra; Thompson v. Vestal Lumber & Mfg. Co., 22 So.2d 842; Archibald v. Employers Liability Assur. Corp., 11 So.2d 492; McDermott v. Funel,

247 So.2d 567 (1971).

The Supreme Court recognized the concubines, common-law wife as a dependent, and the couples' relationship as a permanent relationship like a husband and wife, and cites the following cases as defining concubinage: Succession of Franz, 94 So.2d 270 (1957); Succession of Johraus, 38 So.2d 417 (1905); Succession of Keuhlig, 187 So.2d 520 (La. App. 3rd Cir. 1966). The concubine is a wife without title and a man and woman living together in a relationship for the purpose of "family" and the children of that relationship are entitled to compensation benefits. In interpreting the statute, the Court found that the intent of the statute was to protect all dependent members of a household from the loss of support.

The Supreme Court cited Professor

Malone who in his commentary states that denial of compensation to the concubine is more moralistic than it is sound. No other claimant need prove his moral worthiness so long as he or she is dependent. Malone, Louisiana Workmen's Compensation Law, §304, p.399 (1957).

The Supreme Court recognized the right of a concubine to collect workmen's compensation and characterizes the relationship as a stable relationship. They did not use the sam [sic] old public policy arguments.

Following this case is another landmark case which is also out of the Supreme Court of Louisiana, Jackson v. Continenta [sic] Casualty Co., 412 So. 2d 1364 (S.Ct. 1982). Phillip Jackson, an illiterate Louisiana State University employee, paid for a life insurance

coverage for Beulah Jackson, his concubine. La.R.S. 22:176(2). They lived together for some seven years. The Supreme Court found for Phillip Jackson, ruling that he should be allowed to recover insurance benefits. The Court characterized their unmarried state as a very "technical point". The insurance policy is a contract and Mr. Jackson entered into that contract with the insurance company and should be allowed recovery. The contract was valid and was enforced by the Supreme Court of Louisiana.

In summary, the Supreme Court of Louisiana enforced a contract between a paramour and a third party and in dicta in both Henderson, supra and Jackson, supra, reflected a significant change in the public policy arguments. The Court recognized the right of concubines

and paramnours [sic] to be treated equitably. In Johnson supra, the term common-law union is used instead of concubinage. This relationship is characterized as a stable, warm, loving relationship between two parties. These cases have expanded the law to include rights and a legal status for a common-law wife and an extension of the logic would dictate that the parties have a right to litigate their rights in Court.

In the 20th Century the criteria that the Courts must frequently used [sic] to decide issues between the common-law spouses has been Louisiana Civil Code Article 1481 and public policy arguments. The public policy argument assumes that marriage preserves and strenthens [sic] society with responsibilities and obligations providing order to society. Marriage is an important element of

society and, as such, any erosion of marriage is an erosion of the stability of society.[5]

A traditional marriage lasted for a lifetime of one of the spouses or both. It emphasized the husband's authority and the submissive wife's role as a mother and housewife (caring for children, husband and house along with other matters)[9], although women who lived in the 1800's would disagree. The community aspect was emphasized over either individual personalities of the spouse.[10] The new marriages have changed the roles of the parties and the economic structures of the community. Stability of the marriage is not sustained by the statutes. The divorce rate reflects that 30% to 40% of marriages now formed are predicted to terminate in divorce and three out of four divorced persons will

remarry.[11] At present the typical traditional family of the breakwinner [sic]/homemaker with at least two children comprise a statistical minority of the population. The one-parent family is growing at ten times the rate of other families.[12]

Illegitimate births accounts [sic] for 14.2% of all live births in 1975 and in 1976 and illegitimate births in the black population accounted for more than one-half of all live births. Characteristics of the new marriage is that while it lasts, it is more compassionate, close and intense, but it is more perishable and unstable. There has been a subtantial [sic] upheaval in the family law systems in Western industrial society beginning in the 1960's, and from 1960 to 1970, the number of unmarried cohabitants in the United States increased

by 800%, representing a trend that is likely to continue.[14] An estimate 2.7 million people cohabit.[15] The number of unmarried couple households doubled to 1.3 million.[16]

The Court can take public notice of the influence of the media regarding the sociological acceptance of "living togethe [sic] her [sic]" - pre-marital sex, adultery, single family households, divorce and illegitimate births. The acceptance of pre-marital sex and adultery is common place among all current soap operas on daytime television. Many present-day movies, both on cable television and in theaters, also depict society's modernized standards and attitudes regarding sex and common-law marriage (See Index).

The progression of society and the

law is to respect the individual. Individual members of society keep society stable. Respect for the individual's rights has been the cornerstone of the law. In the area of family law in this state, the legislature has shown a clear intent to remove all putative, moralistic attitudes toward divorce and separation by repealing much punitive legislation and enacting no fault divorce, no fault separation. These have been significant changes in the community property system, equalizing the roles of both husband and wife, and joint custody of children. Banking laws now treat women equally. Coupled with the Supreme Court decisions regarding concubinage, common-law marriage and their relationships to contract and workmen's compensation dictates the Court remand all causes of actions to the

lower Court for trial.

Other states have dealt with public policy discussion on common-law marriage. Some states have following the" [sic] severance doctrine", meaning that if sex was not part of the consideration, then the agreement can be enforced as per the contract law of the state. Kozlowski v. Kozlowski, 403 A.2d 902 (1978); Dosek v. Dosek, 4 Flr. 2828; McCall v. Frampton, 81 A.D.2d 607; Marone v. Marone, 50 W.4 2d 481; Kinnison v. Kinnison, 627 P.2d 594 (198). [sic]

Living together has been found not to be in violation of public policy in the following cases: Kinnison, supra, Glasgow v. Glasgow, 410 N.E.2d 1325 (1980); Lathan v. Lathan, 547 P.2d 144 (1972); Tyranski v. Piggins, 205 N.W.2d 595 (1973); [sic] v. Somera, 41 N.Y.3d 858 (1977); Green v. Richmond, 337 N.E.2d 691

(1975); McHenry v. Smith, 609 P.2d 855 (1980); Vine v. Vine, 7 F.L.R. 2766 (Conn. S.Ct. 198) [sic].

Other states have upheld the right of parties to contract. Marvin v. Marvin, 18 Cal.3d 660, 557 P.2d 106; Crowe v. Degioia, 179 N.J. Super (1981); McHenry v. Smith, 609 P.2d 853 (1980).

A constructive trust has been upheld in the following jurisdictions: Alboe v. Harvin, 30 So.2d 459 (1947); Walberg v. Mattson, 232 P.2d 827 (Wash. 1951); Padillo v. Padillo, 100 P.2d 1093 (Cal. 1940).

The State of Washington has dealt with long-term family-type, non-marriage relationships in the most consistent manner using the following theories:

1) implied partnership or joint venture (In Re: Estate of Thornton, 81 Wash.2d);

2) constructive trust (Humphries v. Reveland, 407 P2d 967 (1966));

3) resulting trust (Walberg v. Mattson, 232 P.2d 827);

4) Owners (Creassman v. Boyle, 196 P.2d 835; and

5) Tenancy in Common West v. Noels, 311 P.2d 389.

Issues II, VI, VIII, IX, X, XIII, and XX all deal with the issue of concubinage/common-law marriage and its influence on the present decision. The major portion of this brief has been devoted to the law as it pertains to concubines. Louisiana Civil Code Article 1481 limits donations to concubines and violates the Louisiana and United States Constitutions. There are no other Louisiana laws which define the rights of a concubine. Common-law marriage is used interchangeably with the term concubinage.

Jackson, supra and Henderson, supra. There are no statutes stating that concubinage is either illegal or illicit. The law has developed almost entirely from public policy arguments and the application of these dictate that the Court re-evaluate the public policy argument that resulted in the prior decisions.

The Supreme Court of the State of Louisiana has abandoned the prior illicit, illegal taint public policy argument and has gone back to an equitable approach to individual rights of each party in a common-law marriage (Henderson, supra and Jackson, supra). In fact, the Court in both cases uses the term common-law marriage. Both cases emphasize that the common-law marriage is a relationship that benefits the parties

and in which the State accepts and provides protection for the parties (Henderson, supra). In extending the benefits to individuals of a statute in a common-law marriage, the past public policy arguments became obsolete. The Supreme Court reaffirmed and further extended protection to individuals in a common-law marriage under Jackson, supra. The Court enforced a contract with a third party insurance company. Again, the language of the Court was gentle and accepting of the parties. The Courts have gone back to an equitable approach to the individual rights of parties in a common-law marriage. The Court stated that a common-law spouse should not be barred from recovery by an "irrelevant legal status". The purposes of group insurance does not distinguish between a dependent concubine and a legal spouse.

In addition to the Supreme Court's rulings, the legislature has shown an intent to rectify past inequities in the law by repealing the community property law, and enacting legislation which takes the "fault" out of divorce and separation. The new joint custody law attempts to equalize the responsibility of parents. The new community property law provides that spouses can contract after marriage, removing a disability which had previously existed in the law. The community property law also changed the law regarding donations between the spouse and the spouse and third parties. The legislature changed the alimony laws of the State, and acknowledged in Loyacano v. Loyacano, 358 So.2d 304 (S.Ct. 1978), the changing role of women in society and within their marriage.

Even if the Court choose [sic] to distinguish this case from Henderson, supra, or Jackson, supra, the Court must recognize the urgent need for the Courts to enforce contractual agreements of individuals who cohabit. The Courts have to deal with the public policy issue and Louisiana Civil Code Article 1481 raises serious Constitutional issues. Because of the [sic] fact, unequal treatment in the law, the individuals who suffered the most as a result of the public policy arguments were women in general and black women more particularly. Society has changed dramatically and drastically requiring that the Court review the issues presented in this case. Is the Court going to contrive to deny our state population access to their day in Court and to given them redress of their grievances? The Court cannot be

confused about the issues. This case and no other case cited in the Syllabus of Concubinage involved casual sex. All of the relationships lasted over a five-year period with many of them lasting over 30 years. Each situation should be governed by equitable principles and established legal precedents in Louisiana law to remedy this situation.

Professor Fine in his law review articles points out the meaning, scope and function of the original texts of the Louisiana civil law. The French recognize L'Union Libre and property matters thereto. More serious is the public policy issues which are reflected in Louisiana law.

Professor Fine in his article outlines present French law. The French have defined an entire system of law dealing with the rights of common-law spouses,

including the division of property and the rights of children from that union. Louisiana law was derived directly from French law. The French law more directly corresponded to the early Louisiana cases following equity principles.[17]

ASSIGNMENT OF ERROR ON ISSUE I, ISSUE III, ISSUE IV, ISSUE V AND ISSUE VI

ARGUMENT OF LAW ON ASSIGNMENT OF ERROR OF ISSUE I, ISSUE III, ISSUE IV, ISSUE V AND ISSUE VI

The Court, when addressing the oral contract, ruled that it was a universal partnership. Historically concubinage cases have couched the agreement as a universal partnership. In Delamore supra and Malady, supra, a universal partnership was recited and the court applied equitable ownership, thereby dividing the property equally among the parties. Later cases, Forshee, supra; Chambers, supra; and Guerin, supra, also classify

the agreements between parties as universal partnerships either on the court's logic or due to the pleadings. None of the cases deal with the legal nexus from the oral contract to the old partnership law which was drafted to govern businesses.

There is no statutory reason why the courts began to apply partnership law to any oral contract. There is no explanation within the body of concubinage law except that the goals of the parties were joint and the state is a community property state.

Most of the cases are devoid of information regarding the pleadings and only refer to a request for equitable relief. In characterizing the implied or express agreement among the parties, the agreement was characterized by the Court as a universal partnership.

The intent of the redactors of the code was to treat a community of acquets and gains, a partnership, differently than partnerships defined in partnership law, Louisiana Civil Code Articles 2806 and 2807 (repealed 1980).

The community, created by marriage, is described as a partnership under the old community law, Louisiana Civil Code Articles 2221, 2393 and 2399. Individuals living in concubinage situations are similarly situated as married individuals. Clearly, the Guerin, supra case presented the issue of a commercial partnership. Before courts would not recognize the partnership venture raising a public policy argument that all monies used in the business were tained by the concubinage. Whenever the concubine came close to recovery via partnership law; Guerin, supra; Gadler, supra; Foshee,

supra; Chambers, supra; Keller, supra, the Courts would reason that recovery was barred because of the "taint" to any investment the concubine made to the venture. Despite the industry of the concubine, she wss denied recovery. However, the paramour's industry and money was not tainted and the paramours were allowed to keep the profits oif [sic] the joint venture of the parties.

The partnership law was not drafted to encompass the relationship between plaintiff and defendant, John G. Schwegmann, Jr. The partnership is sui generis and the statutory formalities in the partnership law is not intended to apply to the relationship between the parties. Their relationship is not simply an arms length business arrangement, but an extremely personal one, subject to all the attendant

possibilities of undue influence and overreaching. It is impractical for the Court to expect the parties to conduct themselves in the formal manner of businessmen.

The Court has used the partnership law as a vehicle to throw a concubine out of Court by characterizing the relationship as a universal partnership and requiring that it be in writing, therefore, defeating any claim.

Even under the old law, it was possible for the parties to have been in a commercial partnership instead of a universal partnership or a combination of partnerships. A commercial partnership is defined in the old law in Louisiana Civil Code Articles 2324 and 2825.

A commercial partnership under prior Louisiana law allowed partners to engage

in commercial venture. In fact, engaging in any activity defined as being commercial could transform the the classification of the partnership (Southern Coal Co. v. Sundbery & Winkler, 104 So. 124,125 (1928)). The only limitatioins [sic] of a commercial partnership under prior partnership law was the inability of the parties to own immovable property (Hollier v. Fontenot, 216 So.2d 842 (La. App. 3rd Cir. 1968)).

Parties could have had several partnerships, some which engaged in commercial venture and a universal partnership. Applying old law, any commercial venture would change the nature of the partnership (Southern Coal, supra; Shalett v. Brownell Kide Co., 153 So.2d 425).

It is clear that all the parties who

contracted intended to have a valid contract/partnership. When the court classified the agreement as a universal partnership under the old law, it was found to be invalid due to the pre-requisites for a universal partnership, but that did not deal with the assets that had been acquired by the partnership. Just because a partnership is not legally valide does not mean it did not acquire assets nor does it change the intent of the parties.

The assets should be dispursed [sic] via partition under the old law. Plaintiff in this case is certainly entitled to have the court examine the assets and divide them accordingly. Gadlin, supra recognized the right of the partner to receive and have restoration of money advanced and contributed for

partnership purposes, despite the legal ineffectiveness of the verbal partnership agreement.

Under the old law, these are factual issues to be determined. The defendant was an astute businessman who invested in real estate and managed his grocery store business and another business. A grocery store business is a commercial partnership under the old law and so is the wholesale liquor business. The plaintiff testified that she gave advice about the stores and was promised money (See Facts). No major defendant was deposed and plaintiff does not have the necessary evidence to counter the major factual issues; i.e. the legal definition and clarification of their agreement. Coul the agreement be a hybrid or solely a contract? Assuming there is a partnership under the old law, what assets, if

any, were accumulated?

The Court was incorrect in applying the old law as the relevant law, characterizing that the oral contract would be a universal partnership law. Enacted in 1980, Louisiana Civil Code Articles 2801 - 2893 encompass the new partnership law. As of January 1, 1980, the new partnership law went into effect.

The new law states that a partnership is an "entity". All classification of types of partnerships were eliminated. The only type of partnership now in existence is an ordinary partnership.

Under the new partnership law, the contract would not have to be in writing. Louisiana Civil Code Article 2801. Under both the old and new partnership laws, a partner had the right to bind other parties as to third parties and between

themselves (Krautkramer Ultraservice, Inc. v. Port Allen Marine Services, Inc. 248 So.2d 336).

Section 3 of the new law provides that the provisions of this act shall apply to all partnerships, including those existing on the effective dates of this act. At present, the proper partnership law to apply to this case is the present law. If the Court is to classify an oral contract as partnership, it would be under Louisiana Civil Code Article 2801 which states: "A partnership is a jurisdical [sic] person distinct from its partners, created by a contract between two or more persons to combine their efforts or resources in determined proportions and to collaborate at mutual risk for their common profit on commercial benefit."

The factual issues before the Court under the new partnership law is what are the assets of the partnership? When did it begin? Has it ended?

The Court should have enforced an oral contract. The contract is an oral contract and is governed by Louisiana Civil Code Articles 1761, 1764, 1765, 1779 and 2277. The conditions for a valid oral contract pertains to the ability of the parties to contract, the terms of the contract and a lawful purpose.

A contract need not be in writing to be valid so long as all requirements to its formation are fulfilled and the contract may be complete from action, inaction, and silence and the Court, when looking into the intent and consideration of the parties, looks at the entire contract and the intent of the

parties. Stupp v. Con-Plex, 344 So.2d 394 (1st Cir. 1977).

The Louisiana Code requires good faith performance of all obligations and will enforce these obligations (Louisiana Civil Code Article 1901); the obligation of the contract extends not only to law, but also equity and custom and whatever is necessary to carry it into effect. The Court can even, with no written contract, enforce obligations based on Louisiana Civil Code Articles 1865, 1964, 1903, and 1901. The Court states in National Safe Corp. v. Benedict & Myred, INc. [sic], 371 So.2d 792 (S.Ct. 1979) that the Court using these articles can enforce obligations not explicitly stated in a contract. Good faith performance is always implied. Everything incident to or necessary to carry it into effect is part of the

the agreement. In National Safe Corp., supra, the Court went beyond the written context of the contract enforcing obligations which were not in the written contract, expanding the scope of the interpretation of both written and oral contracts.

An oral contract is the issue before the Court. Louisiana Civil Code Article 2277 states that an oral contract for money must only be proven by one credible witness and other corroborating circumstances. The interpretive cases state that the plaintiff herself can serve as a credible witness (Miller v. Garvey, 408 So.2d 946 (1st Cir. 1981). Great discretion is given to the trial judge's ability to determine the credibility of the witnesses and the corroborating evidence on the proof of an oral contract (Green v. Provencal Tie

Mill, 411 So.2d 1228 (3rd Cir. 1982).

The corroborating circumstances that would support an oral contract do not require independent proof of every detail of the witness's testimony (Samuels v. Firestone Tire & Rubber Co., 342 So.2d 66 (S.Ct. 1977) and corroboration testimony under Louisiana Civil Code Article 2277 need only be general (Ory v. Griffin, 162 So.2d 97 (1st Cir. 1964)).

Plaintiff and defendant also have entered in an innominate contract as provided by Louisiana Civil Code Article 1977 and recognized in the present partnership law. This classification of contract covers unclassified contracts or innominate contracts. This contract is subject to general obligation articles only and has been used in Louisiana law over a long time period. The Court, when faced with a contractual

situation which does not fit into any one category of contracts, have used the concept of the innominate contract (Nelson v. Texas P. Ry. Co., 92 So. 754; Thielman v. Guhlman, 44 So. 123 (1907); Phelan v. Wilkson, 38 So. 570; Hilliren v. Minoir, 12 La. Ann. 124 (1857).

ASSIGNMENT OF ERROR ON ISSUE IX, ISSUE X, ISSUE XIII, ISSUE XIV, AND ISSUE XV

ARGUMENT ON ASSIGNMENT OF ERROR ON ISSUE IX, ISSUE X, ISSUE XIII, ISSUE XIV AND ISSUE XV

The question of whether plaintiff would be permitted to recover from defendant, John G. Schwegmann, Jr., on a theory of quantum meruit/quasi-contract/implied contract was dismissed as between plaintiff and defendant, and the judge further ruled that any further relief as against other defendants would not be granted unless it was proven that it was not interwoven with the

concubinage. The law clearly enforces contractual rights as between a common-law spouse and third parties (Jackson, supra and Henderson, supra). The law would not prevent the Court from examining the facts surrounding the enrichment of all named defendants and that examination of facts cannot be excluded because the party seeking recovery lived in a status of concubinage. None of the concubinage cases suggest this extension of the present law (See all cases on the Concubinage Index).

Plaintiff testified that she rendered services to the corporate defendants (See Facts), to John F. Schwegmann (See Facts), and to Margie Schwegmann (See Facts). She is entitled to relief from all other defendants..

Equitable relief encompasses a quasi contract, quantum meruit, unjust

enrichment and/or implied contract. Louisiana law provides equity to parties where there is no other available remedy. Louisiana Civil Code Article 21 provides that when there is no express law, the judge is bound to proceed and decide according to equity. To decide equitably, an appeal is to be made to natural law and reason or received usages where positive law is silent and Louisiana Civil Code Article 1965 which allows the court to apply the principles of equity when the law of the land and that which the parties have made for themselves by their contract are silent. Courts must apply principles of the moral maxim stated in Louisiana Civil Code Articles 1965, 2301, 2294, 2295, and 2293. Both Code articles were derived from corresponding French codal articles. In Louisiana law, equity is an ideal of

justice, serves as a guide for the formulation of legislative precepts, to correct justice in particular cases and to fill the unavoidable gaps of positive law. Unjust enrichment is defined within the context of Louisiana law relying expressly on Article 21 and 1965 of the Civil Code. (Minyard v. Curtis Products, Inc., 205 So.2d 422 (1967)). The Court can apply the above articles for an equitable solution in the absence of positive law (Jacob v. Roussel, 100 So. 295) and in the absence of procedural law governing the action (Crescent City Gaslight Co. v. New Orleans Gaslight Co., 27 La. Ann 138 (1975)). The Court used equity to proportion a distribution of loss among several insurance companies (Ouachita Parish Police Jury v. Anchor and Co.

176 So. 639 (2nd Cir. 1937)).

The present matter falls within the category of cases which would allow recovery based on the theory of unjust renrichment [sic] which is based on Articles 21 and 1965 of the Civil Code (Segura Realty Co. v. Segura Sugar Co., 82 So. 684 (1919); LeBlanc v. City of New Orleans, 70 So. 212 (1915).

There must be an enrichment and improvishment. There must be a connection between the enrichment and the resulting impoverishment and there must be an absence of cause for the enrichment and the impoverishment; and recovery will be allowed where there is no other remedy at law (Edmonston v. A-Second Mortgage Co. of Slidell, Inc., 289 So.2d 116 (S.Ct. 1974)).

ASSIGNMENT OF ERROR ON ISSUE III

ARGUMENT OF LAW ON ISSUE III

The facts would also establish a constructive trust. All defendants were enriched and the Court must examine the facts to establish the amount of recovery. A constructive trust has been enforced in the State of Louisiana, primarily when the Courts were unable to reach a legal and equitable solution under existing Louisiana law as regards the parties fiduciary responsibility.

The concept is based on a fiduciary responsibility between two parties.

An agent owned the utmost fiduciary responsibility to the principal and cannot acquire an adverse interest to the principal. A common problem is when an agent comingles the principal's property with his own property and transfers the property to his own name. The Courts must resolve the ownership

rights of the principal when the property may have become the property via the actions of the agent. Louisiana jurisprudence has held that agents cannot become the owners of property which an agent had the management of and which belongs to the principal; said property must be considered to be held in a constructive trust for the principal (Housewright v. Steinke, 158 N.C. 138); Assunto v. Coleman, 1094 So. 138 (S.Ct. 1925); McClendon v. Bradford, 7 So. 78 (S.Ct. 1899).

The following cases establish that a constructive trust is recognized in Louisiana (Sentell v. Richardson, 29 So.2d 8521 (S.Ct. 1947); Succession of Ononato, 51 So.2d 804 (S.Ct. 1951); Alley v. Miranon, 614 F.2d 1397 (5th Cir. 1980); New England Mutual Life Ins. Co. v. N. C. Randall, 42 La. Ann. 260.

The constructive trust is used as an equity vehicle to create a principal agent relationship and to provide all fiduciary responsibilities as between the parties (Voss v. Mike & Tony's Steak House, 230 So.2d 470 (1st Cir. 1970); Succession of Heckert, 160 So.2d 375; Bosworth v. New Orleans Federal Sav. & Loan Assn., 258 So.2d 191.

***

The remaining portion of the Petition for Writ of Certiorari and Review pertaining to the issue of whether the Court should have considered the recusal of all of defendants' attorneys despite the absence of one attorney of record for defendant has been omitted, as irrelevant to the proceedings now before the Court.

CONCLUSION

The developments of law defining the rights of unmarried parties who live together and have sex developed on a case by case basis, there is no statute or code article which gives the courts guidance vis-a-vis the rights of the parties.

Will the moral fiber of a society which already has a lifestyle which sees over fifty percent of all marriages end in divorce be eroded by extending basic fundamental rights to parties who live together? To ignore the reality of life in that parties do live togehter [sic], do work, do pay taxes, do have children, do make contributions to society is to not acknowledge that society has changed since the 1800's. John G. Schwegmann, Jr. ran for governor and was elected to

numerous political offices. Additionally, as a result of his businesses, he paid many dollars into the coffers of the state. Did this couple add to the demise of society?

Plaintiff and defendant did not expect their relationship to be treated like a marriage, however, they should have basic rights to litigate contractual rights in the State Courts. To extend the Fifth Circuit's opinion two professional male and female who practice together and also live together have sex with one another could find out that they have lost any rights to seek legal redress in the Courts of the State of Louisiana.

It is a dangerous trend to deny any part of society access to courts of law, as the judicial system is the only method in a civilized society to redress a

grievous [sic]. Can we honestly say that allowing unmarried couples to litigate in a court of law will contribute to a demise in civilized society, especially since society has changed radically since the 1800's. Some woulc say there already had been a demise in society. This plaintiff is not asking for any rights other than one to have her case heard in a court of law. The court is not giving her anything as her case will stand or fall on its merits as will all other cases.

The Supreme Court for the State of Louisiana has the capacity to address this body of law and clarify for the State the legal remedys [sic] available to unmarried couples.

Respectfully submitted,

s/ Bettyanne Lambert-Bussoff
BETTYANE LAMBERT-BUSSOFF
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APPENDIX D

APPENDIX "D"

MARY ANN SCHWEGMANN a/k/a MARY ANN BLACKLEDGE

VS.

JOHN G. SCHWEGMANN, JR., JOHN F. SCHWEGMANN, MELBA MARGARET SCHWEGMANN, AND SCHWEGMANN BROS. GIANT SUPERMARKETS, INC., SCHWEGMANN BROS. TERMINAL, INC., SCHWEGMANN BROS., INC., SCHWEGMANN BROS. WESTBANK, INC., SCHWEGMANN BROS. WESTSIDE CORPORATION AND SCHWEGMANN VETERANS CORPORATION

231-175

24th JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

FILED FOR RECORD
OCT 5 10 50 AM '79

DY CLERK OF COURT
Parish of
Jefferson LA

DIV. B
JUDGE
FRANK V. ZACCARIA

FILED: _____ _____
DEPUTY CLERK

PETITION FOR:

1. SPECIFIC PERFORMANCE AND/OR DAMAGES BASED ON BREACH OF CONTRACT,

2. FOR THE RECOGNITION OF CONSTRUCTIVE TRUST OR DAMAGES BASED ON IMPLIED CONTRACT,

3. DECLARATORY RELIEF,

4. QUASI CONTRACT AND/OR QUANTUM MERUIT,

5. INTERFERENCE OF CONTRACT RIGHTS, AND

6. DECLARATION OF SIMULATION AND/OR REVOCATORY ACTION

Now into Court comes MARY ANN BLACKLEDGE, herein represented by her undersigned counsel, a person of the full age of majority and a resident of the Parish of Jefferson, State of Louisiana, with respect represents that:

FIRST CAUSE OF ACTION

Specific performance and/or damages based on breach of contract

1. Defendants, JOHN G. SCHWEGMANN, JR., JOHN F. SCHWEGMANN and MELBA MARGARET SCHWEGMANN are all persons of the full age of majority, residents of the Parish of Jefferson, and Schwegmann Bors. [Sic] Giant Supermarkets, Inc., Schwegmann Bros. Terminal, Inc., Schwegmenn Bros. Inc., Schwegmann Bros. Westbank, Inc., Schwegmann Westside Corporation

and Schwegmann Veterans Corporation are all Louisiana corporations domiciled in the Parish of Jefferson, are all liable in solido unto plaintiff in the amount of THIRTY MILLION AND NO/100 ($30,000,000.00) DOLLARS plus legal interest and reasonable attorney's fees and all court costs for the following to wit:

2.

On the 15th day of May, 1966, plaintiff and defendant, JOHN G. SCHWEGMANN, JR. (hereinafter referred to as "SCHWEGMANN"), entered into a contractual agreement whereby each agreed that they would live together and that during the time thereafter that the parties lived together, they would combine their skills, efforts, labor and earnings and would share equally any and all assets and property acquired and/or accumulated as a result of said joint skills, efforts,

labor and earnings.

3.

Shortly after entering into the contractual agreement, the agreement was modified in that plaintiff had to give up and forego her lucrative career in business management in order that she would devote her full time to the above described duties plus become actively involved in the daily management of the business affairs of plaintiff and defendant, SCHWEGMANN, that included without limitation the following:

a) plaintiff was actively involved in the policy decisions, both daily and long term, of the Schwegmann Bros. Giant Supermarkets for 13 years;

b) plaintiff was actively involved with the acquisition of property, expansion programs

and construction of new stores for Schwegmann Bros. Giant Supermarkets;

c) plaintiff was actively involved in the management of all other existing and subsequently created Schwegmann Bros. Giant Supermarkets;

d) plaintiff stood with SCHWEGMANN in his fight to make the Schwegmann stores unique and a financial success. Defendants reaffirmed that plaintiff had an equal interest in the stores both by SCHWEGMANN, John F. Schwegmann and Melba Margaret Schwegmann.

e) plaintiff was actively involved in the daily editorials put forth in the news media by SCHWEGMANN and Schwegmann

Bros. Giant Supermarkets;

f) plaintiff was actively involved in other investments made on behalf of the joint enterprise of plaintiff and SCHWEGMANN;

g) plus other duties, services and activities to be shown at the trial of this matter.

4.

It was further agreed that during the time the parties lived together, plaintiff and defendant would hold themselves out in the general public as husband and wife, plaintiff would further render services as a companion, homemaker, housekeeper and cook to SCHWEGMANN, act as mother to defendants, John F. Schwegmann and Melba Margaret Schwegmann, raise them as if they were her own children and thereby contribute her skills, efforts,

labor and earnings toward the acquisition and accumulation of property.

5.

In addition to the above duties, plaintiff was also required to assist SCHWEGMANN in his political career and to devote considerable time and effort to his political elections.

6.

Defendant, SCHWEGMANN, further agreed that he would provide for all of plaintiff's financial support and needs for the rest of her life in the same style and manner that was established during the time that the parties lived together consistent with defendant SCHEG-MANN's estimated annual earnings in excess of ONE MILLION AND NO/100 ($1,000,000.00) DOLLARS per year.

7.

It was further agreed that the assets and properties would remain in

the name of SCHWEGMANN and/or corporations directly or indirectly controlled by him.

8.

Pursuant to, in confirmation of, and in reliance upon the above described agreement, plaintiff and SCHWEGMANN lived together continuously from the 15th day of May, 1966 until the 11th day of May, 1978.

9.

Plaintiff has at all times performed each and every covenant, obligation and condition required to be performed and rendered the above described services, skills, efforts, labors and earnings as required by the terms of the agreement.

10.

During the time that plaintiff and SCHWEGMANN lived together, they

acquired as a result of their skills, efforts, labors and earnings, assets and property valued at SIXTY MILLION AND NO/100 ($60,000,000.00) DOLLARS consisting in part of the value of the corporate stock of the defendant corporations created by the joint efforts of plaintiff and SCHWEGMANN plus other assets and properties to be shown at the trial of this matter.

11.

On or about the 11th day of May, 1978, at SCHWEGMANN's request and insistence, plaintiff was asked to leave defendant, SCHWEGMANN's household and sever all business relationships.

12.

Despite repeated demands, the defendants refuse to recognize any ownership rights in the assets and properties accumulated by plaintiff and SCHWEGMANN,

even though in thirteen (13) years all of the defendants continually and openly recognize that the assets and properties belonged to both plaintiff and SCHWEGMANN.

13.

On information and belief, beginning in the early part of 1978, defendants John F. Schwegmann and Melba Margaret Schwegmann and the defendant corporations began to assert influence and control over the business and personal affairs of SCHWEGMANN that included requiring SCHWEGMANN to transfer to one or more of the defendants all of his corporate stock in the defendant corporations and possibly other assets and property and have continuously refused to recognize plaintiff's ownership interest in one half (1/2) of the corporate stock and continue to refuse to transfer, convey, assign and pay over to plaintiff

her equal share of the property, earnings, and accumulations contrary to the terms and conditions of the agreement.

14.

At all times material herein, all of the defendants recognized the above described agreement, accepted all the benefits of the agreement and ratified the agreement, if required to do so, when they were capable of doing so as a matter of law.

15.

The services performed by plaintiff for the defendants and the contributions of plaintiff's skills, efforts, labors and earnings under and pursuant to the agreement is adequate consideration for her ownership interests in said assets, property, earnings and accumulations plus the lifetime support to be furnished and provided by plaintiff

and the said consideration and agreement are just, fair, reasonable and equitable in all respects.

16.

Defendants have received and will continue to receive during the pendency of this action, rents, issues and profits from joinly owned assets and property in an amount of which plaintiff is uncertain and cannot ascertain without an accounting from defendants, and an undivided fifty (50%) percent of which belongs solely and exclusively to plaintiff.

17.

All defendants have each refused to honor the agreement and have breached the agreement.

18.

Some of the joint assets and property, include the following:

a) Corporate stock in the defendant corporations. acquired in the name or names of one or more of the defendants pursuant to the above described agreement are unique in character in that there exists no other properties substantially similar thereto; and as a result of the defendants' breach of the agreement, plaintiff has no adequate remedy at law and monetary damages will be inadequate to compensate plaintiff for the detriment suffered by her.

19.

Therefore plaintiff is entitled to a judgment ordering the defendants to transfer to her an undivided one-half (1/2) interest in the properties listed in paragraph 18.

SECOND CAUSE OF ACTION

To Impress Constructive Trust of

Damages Based on Breach of

Implied in Fact Contract.

20.

Plaintiff realizes and incorporates all previous paragraphs of this petition.

21.

During the course of time that plaintiff and defendant SCHWEGMANN lived together, said parties conducted their relationship in a manner and with the same force and effect as husband and wife, did hold themselves out publicly as husband and wife, and in so doing dealt with each other in a fair and trusting manner thereby creating in both Plaintiff and Defendant SCHWEGMANN a reasonable expectation and belief that the aforesaid understanding and agreement existed between Plaintiff and Defendant, SCHWEGMANN; in particular the parties acted as follows:

a) travelled on vacations and business trips worldwide;

b) plaintiff gave up her career and children of her own to devote her full attention to the business, personal and political goals of SCHWEGMANN and his children, with the continued assurances that she would be secure and share equally the assets and income which were and to be accumulated;

c) plaintiff at all times acted as a homemaker, companion, cook, and confidante to defendant SCHWEGMANN, and his personal advisor;

d) plaintiff took care of defendant SCHWEGMANN on each and every occasion

when he was ill to the extent that she was able and expecially [sic] in 1977 when he was hospitalized with a stroke;

e) plaintiff and SCHWEGMANN mutually planned their financial future together for the rest of their lives and were introduced to innumerable people throughout the world as if Plaintiff were the lawful wife of defendant SCHWEGMANN;

f) plaintiff devoted all aspects of her life to defendant, SCHWEGMANN's interests and well being to the exclusion of her own;

g) throughout the period of time the parties lived

together, defendant SCHWEGMAN always assured Plaintiff that she would always be financially compensated and be secure for the rest of her life and it made no difference that they were not legally married.

h) plaintiff and SCHWEGMANN enjoyed and maintained during the course of their relationship a standard of living SCHWEGMANN promised to maintain for Plaintiff for the rest of her life.

i) plaintiff and SCHWEGMANN discussed all earnings and acquisitions required during the course of their relationship on the same

basis as if the two of them were joint partners and/or joint venturers.

22.

Thereafter, in confirmation of this mutual understanding between Plaintiff and Defendant SCHWEGMANN, Plaintiff and Defendant SCHWEGMANN understood that all skills, efforts, labor and earnings and all property acquired therewith, that each party has performed, expended or contributed, were to be treated as their joint property. Each party understood that, although one party may retain title, possession, custody, and/or control of the joint property, he or she would account for such property to the other party at the termination of the relationship when either party manifested an intent to discontinue living together with the other party.

23.

At the time Plaintiff and Defendant SCHWEGMANN commenced living together and at all times during their relationship while they lived with each other, the most confidential relations existed between Plaintiff and Defendant, SCHWEGMANN and Plaintiff reposed the greatest confidence and trust in Defendant SCHWEGMANN. She entrusted Defendant SCHWEGMANN to manage and care for all the joint property acquired and accumulated through the joint efforts of Plaintiff and Defendant SCHWEGMANN. By reason of this confidence reposed in Defendant SCHWEGMANN and of which Defendant SCHWEGMANN did retain title, possession, custody and control of the joint property herein described.

24.

On or about the 16 day of May,

1978, at Defendant SCHWEGMANN's request, Plaintiff was forced to leave the parties' household, and Plaintiff and Defendant SCHWEGMANN at said time, ceased to live with each other; and Defendant SCHWEGMANN at said time informed Plaintiff that he had no intention of continuing to live with her. Plaintiff thereupon requested that Defendant SCHWEGMANN account to her for all of the joint property acquired and accumulated during the period in which they lived with each other.

25.

By reason of the trust and confidence Plaintiff resposed in Defendant SCHWEGMANN, Plaintiff relied on Defendant SCHWEGMANN to perform his agreement with Plaintiff and to disclose fully all of the joint property of the parties, its nature, extent and value, and relied on Defendant SCHWEGMANN to divide the joint

property of Plaintiff and Defendant SCHWEGMANN in a manner that would result in a substantially equal division of the property. Defendant SCHWEGMANN knew and was apprised of the trust and confidence so reposed in him by Plaintiff.

26.

In response to Plaintiff's request to account for all joijnt property acquired and accumulated through the joint efforts of Plaintiff and Defendant SCHWEGMANN, Defendant SCHWEGMANN violated the confidence PLaintiff had placed in him and repudiated the mutual understanding that had existed during the period in which Plaintiff and Defendant SCHWEGMANN had lived with each other by refusing and continuing to refuse to account for any property in his possession, custody or control, and by refusing and continuing to refuse to disclose to

Plaintiff the nature, extent, and value of the joint property.

27.

By reasons of the violation of the confidence Plaintiff had placed in Defendant SCHWEGMANN and of the repudiation of the mutual understanding between Plaintiff and SCHWEGMANN respecting the treatment of all property acquired and accumulated through the skill, efforts, labor and earnings of Plaintiff and Defendant SCHWEGMANN and each of them, Defendant SCHWEGMANN is an involuntary trustee holding one-half of the joint property and the rents, issues, and profits therefrom in constructive trust for Plaintiff with the duty to convey the same to her forthwith pursuant to Article 21 of the Louisiana Civil Code.

THIRD CAUSE OF ACTION

Declaratory Relief

28.

Plaintiff realleges and incorporates all previous allegations of the petition.

29.

That an actual controversy has arisen between plaintiff and defendants, and each of them, relating to the legal rights, duties and obligations of said parties, to wit:

a) as a result of said agreement and said acquisition of the assets and property, Plaintiff is the owner of one-half (1/2) of all of said assets and property as a tenant in common with defendants.

b) that defendant SCHWEGMANN

has the duty and obligation to pay Plaintiff a reasonable sum as and for her support and maintenance.

30.

That all of said assets and property were acquired while the parties were living in Jefferson Parish, Louisiana, are located in this state and should be treated as would community property if there had been a valid marriage entered into between Plaintiff and Defendant SCHWEGMANN; and that to not enforce her rights in this regard would constitute a denial of due process and equal protection of the law under the United States and Louisiana State Constitutions.

31.

If recovery is denied by the court because of its interpretation of existing statutes and laws (Putative

spouse codal articles, and concubinage codal articles) the court will have unconstitutionally discriminated against plaintiff and all persons similarly situated and in the alternative the codal articles and laws are unconstitutional.

32.

That defendants are estopped from denying the validity or effectiveness of said agreement by reason of:

a) Defendant SCHWEGMANN's intentional inducement of Plaintiff to abandon her career;

b) Plaintiff's abandonment of her career in reliance on the agreement and defendant's continuous representations to her that said agreement was binding and effective;

c) The irreparable financial loss to Plaintiff by reason of her having so abandoned her prior career;

d) The benefits derived by defendants from the agreement.

33.

In the alternative, should this Court not enforce the said agreement, Plaintiff by reason of the facts here above alleged, has suffered damages in excess of $500,000.00. The exact amount of said damages have not been presently ascertained by Plaintiff who will ask leave to amend this petition to insert the exact amount upon ascertainment of same or according to proof.

34.

Plaintiff is informed and believes and upon such information and

belief alleges that defendants will deny each and all of Plaintiff's contentions and will specifically deny that the agreement was entered into between Plaintiff and defendant, SCHWEGMANN, and further deny that plaintiff is entitled to one-half of the assets and property or has any right to support and maintenance from defendant SCHWEGMANN.

35.

That no adequate remedy exists other than herein prayed for by which the rights of the parties hereto may be determined.

36.

The amount of people living together and how various jurisdictions have dealt with this situation can be seen by reference to "property Right of Unmarried Couples: Who Gets What When the Cohabitation Collapses",

Community Property Journal, (Summer 1979) by Marianne M. Jennings and Bruce K. Childers, a copy of which is attached as Exhibit A.

FOURTH CAUSE OF ACTION

Quasi Contract and/or Quantum Meruit

37.

Plaintiff realleges and incorporates all previous allegations of the petition.

38.

During the period of May 15, 1966, and May 11, 1978, at Jefferson Parish, Louisiana and elsewhere, defendants became indebted to plaintiff for services rendered by Plaintiff to defendants at the special insistance and request of said defendants and which said defendants agreed to pay plaintiff.

39.

The reasonable value of said

services was and is the sum of at least TWO MILLION AND NO/100 ($2,000,000.00) DOLLARS together with interest thereon at the legal rate from the time that is occurred.

FIFTH CAUSE OF ACTION

Interference of Contract Rights

41.

Plaintiff realleges and incorporates all previous allegations of this petition.

42.

At all times material herein, plaintiff had valuable contractural rights that were legally protected.

43.

The interference with these rights by defendants John F. Schwegmann, Melba Margaret Schwegmann and the defendant corporations were the cause of plaintiff suffering the damages of which she com-

plains.

44.

Defendants John F. Schwegmann, Melba Margaret Schwegmann and the corporate defendants were fully aware of the contractual agreements between plaintiff and SCHWEGMANN prevented the performance of the agreement that would have herein been performed by SCHWEGMANN.

45.

Plaintiff is entitled to the damages from these named defendants in the same amounts as sought in her other causes of actions.

SIXTH CAUSE OF ACTION

Declaration of Simulation and/or Revocatory Action.

46.

Plaintiff realleges and incorporates all previous allegations of this petition.

47.

At all times material herein, plaintiff was and is a creditor of defendant SCHWEGMANN.

48.

In the early part of 1979 defendant SCHWEGMANN executed a purported act of sale of his corporate stock in the defendant corporations to his son, John F. Schwegmann for the sum of FORTY MILLION AND NO/100 ($40,000,000.00) DOLLARS.

49.

Plaintiff avers that the purported act of sale is a simulation and had no reality or substance whatsoever, as more fully set forth below.

50.

Plaintiff is informed and believes and on information and belief alleges that the purported consideration

of FORTY MILLION AND NO/100 ($40,000,000.00) DOLLARS was never paid by John F. Schwegmann or was ever to be paid and this was done to create the appearance of the transfer of consideration.

51.

SCHWEGMANN has retained possession and control of the corporate stock, and/or the defendants that influence and control SCHWEGMANN control the corporate stock on his behalf.

52.

In the alternative and only in the event that this Honorable Court should find that the purported sale is not a simulation, plaintiff avers that the purported act of sale described above was done in fraud of plaintiff's rights as a creditor of SCHWEGMANN and in order that John F. Schwegmann and the other defendants could obtain an illegal pre-

ference over plaintiff.

53.

On the date of the purported act of sale, John F. Schwegmann was a creditor of SCHWEGMANN and the property transferred was given over in satisfaction of a pre-existing debt owed to John F. Schwegmann by SCHWEGMANN and no sum of money whatsoever was paid for the corporate stock in the said transaction.

54.

Plaintiff is informed and believes and on information and belief alleges that at the time the purported act of sale took place, SCHWEGMANN was insolvent and John F. Schwegmann knew of such insolvency and entered into the fraudulent agreement in order to obtain an illegal preference over plaintiff.

55.

In the further alternative, if it should be shown that any sum of money whatsoever was paid by John F. Schwegmann to SCHWEGMANN as the purchase price of the corporate stock, which plaintiff specifically denies, plaintiff alleges that such sum was far below the true value of the property which plaintiff alleges to have been FORTY MILLION AND NO/100 ($40,000,000.00) DOLLARS as of the date of the purported sale.

56.

In the further alternative plaintiff alleges on information and belief that at the time of the act of sale SCHWEGMANN did not have over the amount of his debts more than twice the amount of the property passed by the gratuitous contract.

WHEREFORE, Plaintiff prays for the following alternative relief:

1. For judgment in solido in the amount of THIRTY MILLION AND NO/100 ($30,000,000.00) DOLLARS plus legal interest and attorney fees against SCHWEGMANN, John F. Schwegmann, Melba Margaret Schwegmann and Schwegmann Bros. Terminal, Inc., Schwegmann Bros. Inc., Schwegmann Bros. Westbank, Inc., Schwegmann Westside Corporation and Schwegmann Veterans Corporation;

2. That defendants be compelled to account for all joint property and assets acquired and accumulated through the skills, efforts, labor and earnings of plaintiff of SCHWEGMANN and each of them;

3. That this Court declare that Plaintiff has an undivided one-half interest in all assets and property as

described within this petition, as a tenant in common with defendants;

4. That this Court order a division of said assets and property according to the respective rights of the parties, or if it appears that a division cannot be had without great prejudice to the parties, that a sale of the said property be ordered and the proceeds thereof be divided between the parties according to their respective rights;

5. That the Court determine that as actual or ficticious partnership has been created by the conduct of the parties of all of the said assets and property and, that thereafter, the Court dissolve the said partnership and distribute the property to the respective parties;

6. That the Court declare that defendants hold an undivided one-half interest in all of said assets or property as Trustee for plaintiff, and that plaintiff is the owner of an undivided one-half interest therein;

7. That the Court order defendants to execute such instruments that shall be necessary to transfer to plaintiff her one-half interest in said assets and property;

8. For a declaration of the rights and interests of the parties in and to the said assets and property;

9. That this Court declare that Plaintiff has an undivided one-half interest in all of the said assets and property;

10. For damages arising out of said defendants SCHWEGMANN breach of said contract agreement;

11. That defendant SCHWEGMANN be ordered to pay to Plaintiff a reasonable sum per month as and for the support and maintenance of Plaintiff;

12. For the reasonable value of plaintiff's services;

13. For costs of suit incurred herein;

14. For judgment declaring the purported sale of corporate stock to be a simulation, annulling and setting aside the act of sale and decreeing the said property to be subject to execution under any money judgment rendered in this proceeding in favor of plaintiff.

15. If the Court finds that the act of sale is not a simulation, there be judgment declaring the sale in fraud of plaintiff's rights as creditor of SCHWEGMANN and declaring the said sale to be null and void, and the property

to be subject to execution under any money judgment rendered in this proceeding in favor of plaintiff;

16. If the Court finds any sum of money was paid by John F. Schwegmann as the purchase price of the sale of the corporate stock, there be judgment declaring the sale to be made in fraud of plaintiff's rights as a creditor of SCHWEGMANN and declaring said sale to be null and void and any money paid as the purchase price has innured to plaintiff's benefit as a creditor of SCHWEGMANN by adding in any way to the amount of money in the hands of the said SCHWEGMANN and applicable to the payment of the debt owed to plaintiff and declaring that John F. Schwegmann is not entitled to the restitution of any price or consideration he may have paid because of the fraud of John F. Schwegmann and

decreeing the corporate stock to be subject to execution under any money judgment rendered in this proceeding in favor of plaintiff;

16. For a judgment declaring the Putative spouse codal articles, Succession codal articles, and concubinage codal articles unconstitutional.

17. For such other and further relief as the Court may deem just and proper.

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PLEASE SERVE:

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2. John F. Schwegmann
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New Orleans, Louisiana

3. Melba Margaret Schwegmann
112 Green Acres Road
Metairie, Louisiana

4. Schwegmann Bros. Giant Supermarkets, Inc.,
Schwegmann Bros. Warehouse, Inc.,
Schwegmann Bros. Inc.,
Schwegmann Bros. Westbank Inc.,
Schwegmann Westside Corporation, and
Schwegmann Veterans Corporation

all through their agent for service of process

5. William J. Guste, Jr.
Attorney General
State of Louisiana
2-3-4 Loyola Avenue
New Orleans, Louisiana

APPENDIX E

APPENDIX "E"
SUPREME COURT
OF THE STATE OF LOUISIANA

MARY ANN BLACKLEDGE a/k/a MARY ANN SCHWEGMANN — No. 83-C-2500

VS.

JOHN G. SCHWEGMANN, JR.

In re: MARY ANN BLACKLEDGE
a/k/a MARY ANN SCHWEGMANN

Applying for writ of Certiorari and Review to the Fifth Circuit Court of Appeal No. 83-CA-305, from the 24th Judicial Court, Parish of Jefferson, No. 231-175.

January 6, 1984

DENIED

JAD
PFC
WFM
JLD
FAB
JCW
HTL

Supreme Court of Louisiana
January 6, 1984

Frans. J. Labranche, Jr.
Clerk of Court
for the Court